

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE TRUSTEES OF THE
UNITE HERE NATIONAL RETIREMENT FUND
Plaintiff,

against

SMELTZER ENTERPRISES, INC.
D/B/A WHITE TOWER INDUSTRIAL
LAUNDRY AND CLEANERS,
Defendant.

07 CIV 8637

COMPLAINT
JUDGE CASTEL

OCT 05 2007
U.S.D.C. S.D. N.Y.
CASHIERS

Plaintiff, by their attorney Mark Schwartz, Esq., complaining of Defendant,
respectfully allege as follows:

NATURE OF ACTION

1. This is an action by plan fiduciaries to enforce the provisions of a collective bargaining agreement and certain statutory obligations imposed upon Defendant by Section 515 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1145.

JURISDICTION

2. The jurisdiction of this Court is invoked pursuant to Section 301(a) of the Labor Management Relations Act of 1947, as amended ("LMRA"), 29 U.S.C. § 185(a) and Sections 502(a), (e) and (f) of ERISA, 29 U.S.C. § 1132(a), (e) and (f).

VENUE

3. Venue is properly laid in this Court pursuant to Section 301(a) of the LMRA, 29 U.S.C. § 185(a); Section 502(e) (2) of ERISA, 29 U.S.C. § 1132(e) (2); and 28 U.S.C. § 1391(b).

THE PARTIES

4. Plaintiff UNITE HERE National Retirement Fund (“Retirement Fund”) is an “employee pension benefit plan” as defined in Section 3(2) of ERISA 29 U.S.C. § 1002(2). Plaintiff The Trustees of the UNITE HERE National Retirement Fund are fiduciaries within the meaning of Section 502(a) (3) of ERISA, 29 U.S.C. § 1132(a) (3), as defined in Section 3(21) of ERISA, 29 U.S.C. § 1002(21). The Retirement Fund maintains its principal administrative offices at 730 Broadway, New York, New York 10003.

5. Upon information and belief, Smeltzer Enterprises, Inc., D/B/A White Tower Industrial Laundry and Cleaners is a Michigan Corporation having or having had its principal place of business at 10600 Gratiot Avenue, Detroit, Michigan 48213.

6. Chicago and Midwest Regional Joint Board, UNITE HERE (“the Union”) is an unincorporated “labor organization” as defined in Section 3(4) of ERISA, 29 U.S.C. § 1002(4). Upon information and belief, the Union and Defendant have been parties to a series of collective bargaining agreements covering all relevant periods herein. Pursuant to said collective bargaining agreements, contributions to Plaintiff Fund were and are due to be paid monthly by Defendant.

**AS AND FOR A FIRST CLAIM FOR RELIEF BY PLAINTIFF
TRUSTEES OF THE RETIREMENT FUND AGAINST DEFENDANT**

7. Plaintiff, The Trustees of the Retirement Fund repeat and reallege each and every allegation contained in paragraphs “1” through “6” of this Complaint with the same force and effect as if set forth at length herein.

8. Contributions to the Retirement Fund from Defendant for the periods of August 1, 2006 through November 30, 2006 and April 1, 2007 through July 31, 2007

**AS AND FOR A SECOND CLAIM FOR RELIEF
BY PLAINTIFF TRUSTEES OF THE
RETIREMENT FUND AGAINST DEFENDANT**

9. Plaintiff, The Trustees of the Retirement Fund repeat and reallege each and every allegation contained in paragraphs "1" through "8" of this Complaint with the same force and effect as if set forth at length herein.

10. Defendant is now failing and, upon information and belief, will continue to fail to make contributions to the Fund in accordance with the terms and conditions of such Fund and the collective bargaining agreement between Defendant and the Union unless restrained by the Court.

11. No prior application for the relief requested herein.

WHEREFORE, Plaintiff respectfully pray for an order and judgment:

a. Directing Defendant to pay to the UNITE HERE National Retirement Fund the sum of \$8,717.36;

b. Directing Defendant to pay to the UNITE HERE National Retirement Fund interest on the sum set forth in paragraph "(a)" herein, to be computed at an interest rate as prescribed by the Fund, pursuant to Section 502(g)(2)(C)(i) of ERISA, 29 U.S.C. § 1132(g)(2)(C)(i);

c. Directing Defendant to pay to the UNITE HERE National Retirement Fund liquidated damages, to be computed at a rate as prescribed by the Fund, pursuant to Section 502(g)(2)(C)(ii) of ERISA, 29 U.S.C. § 1132(g)(2)(C)(ii);

d. Directing Defendant to pay to the UNITE HERE National Retirement Fund the reasonable attorneys' fees and costs of the action, pursuant to Section 502(g)(2)(D) of ERISA, 29 U.S.C. § 1132(g)(2)(D);


e. Directing that Defendant be restrained and enjoined permanently from becoming or remaining delinquent in its contributions to the Fund, and ordering Defendant to make such contributions in accordance with the terms and conditions of the Fund's rules and regulations and the collective bargaining agreement between Defendant and the Union.

f. Granting such other legal and equitable relief as the Court deems appropriate.

Dated: September 1, 2007
New York, New York

THE TRUSTEES OF THE
UNITE HERE NATIONAL RETIREMENT FUND

By:


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